IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R.No. 5725 of 2006
Date of decision : 2.11.2006.

Raj Kumar Aggarwal

.....Petitioner.

Versus

Parveen Kumar & Ors.

.....Respondents.

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.R.K.Chhibbar, Sr. Advocate
with Mr. Ranjit Chawla, Advocate
for the petitioner.

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VINOD K. SHARMA,J.(ORAL)

The petitioner has challenged the order dated 10.8.2006 passed by the learned District Judge, Gurdaspur vide which application filed by the petitioner for summary dismissal of application moved under Section 34 of the Arbitration and Conciliation Act, 1996(for short 'the Act') has been dismissed.

Mr. Chhibbar, Senior counsel appearing for the petitioner contended that the application moved under Section 34 of the Act was barred by limitation and, therefore, was required to be summarily rejected. The learned Senior counsel argued that the award was made on 21.2.2005, therefore, in view of this the limitation to challenge the said award under Section 34 of the Act expired on 11.7.2005.

The contention of the learned senior counsel was that in view of the application being time barred it was not open to the learned District Judge to proceed with the matter and the same was required to be summarily rejected.

The learned senior counsel argued that the correction made in the award by the Arbitrator was without jurisdiction in view of the provisions of Section 33(1) of the Act. The contention of the learned senior counsel for the petitioner was that under Section 33 of the Act, the Arbitrator could only correct any computation errors, any clerical or typographical errors or any other errors of similar nature in the award and it was not open to the Arbitrator to add anything to the award already made and, therefore, the order passed under Section 33 of the Act being contrary to the provisions of the Act and beyond his jurisdiction could not form the basis to extend the period of limitation.

The learned senior counsel for the petitioner placed reliance on the judgment of this Court reported in **M/s Shakti Rice Mills Vs. Punjab State Warehousing Corporation and others (2005-2) P.L.R. 699** to contend that it is not open to the Court to extend the time beyond the period stipulated under Section 34 of the Act and, therefore, the application moved by the petitioner was liable to be accepted and the learned District Judge could not proceed with the matter on merit.

I have heard the learned counsel for the petitioner and find no force in the contention raised by him. The bare reading of section 34 of the Act shows that three months period has to be calculated from making of award or receipt of copy thereof. However, in case the Arbitral award is

corrected or modified under section 33 of the Act then the three months period is to commence from the said date. It is not in dispute that the Arbitrator passed a clarificatory order on 6.10.2005 and the period of limitation for filing the application under Section 34 of the Act was to be counted from the said date and, therefore, the application under Section 34 of the Act could not be said to be time barred, therefore, was not liable to be summarily rejected as claimed by the petitioner. The contention of the learned Senior counsel for the petitioner that the order under Section 33 of the Act passed by the Arbitrator was beyond the scope of the Act and, therefore, without jurisdiction, is a matter to be adjudicated on merit as observed by the learned District Judge, Gurdaspur. Therefore, no ground for summary rejection of an application filed under Section 34 of the Act was made out. The petitioner will be afforded full opportunity to contest the objections raised under Section 34 of the Act.

In view of what has been stated above, there is no illegality or error in exercise of jurisdiction by the learned District Judge, Gurdaspur which may call for interference by this Court.

November 2,2006 **(VINOD K. SHARMA)**
'sp' **JUDGE**